

**Project title:** Authorize the Mayor to Sign a Professional Services Agreement with the Everett Station District Alliance (ESDA) to Manage the Everett Station District (ESD) Business Improvement Area (BIA)

**Council Bill #** *interoffice use*

**Agenda dates requested:**

April 19, 2023

Briefing

Proposed action

Consent ☒ x

Action

Ordinance

Public hearing

Yes ☐ No ☒ x

**Budget amendment:**

Yes ☐ No ☒ x

**PowerPoint presentation:**

Yes ☐ No ☒ x

**Attachments:** Agreement

**Department(s) involved:**

Legal

**Contact person:**

**Phone number:**

**Email:**

**Initialed by:**

Department head

Administration

Council President

**Project:** Professional Services Agreement

**Partner/Supplier :** ESDA

**Location:** *If relevant*

**Preceding action:** ESDA BIA Ordinance

**Fund:** 665

**Fiscal summary statement:**

There is no fiscal impact to the City. Payments will be made from the ESDA BIA Agency account, which is funded by assessments.

**Project summary statement:**

Council approved the establishment of the Everett Station District Business Improvement Area on December 14, 2022. This agreement assigns administration of the BIA funds for approved purposes, activities, services, and projects for the first year to the Everett Station District Alliance. Thereafter, the City may continue each year to contract with the ESDA or similar organization to administer the program in future years.

**Recommendation (exact action requested of Council):**

Authorize the Mayor to sign the Agreement with the Everett Station District Alliance (ESDA) to manage the ESDA Business Improvement Area.





## PROFESSIONAL SERVICES AGREEMENT EVERETT STATION DISTRICT ALLIANCE

This Professional Services Agreement ("**Agreement**") is dated for reference purposes January 1, 2023 ("**Effective Date**") and is between the City of Everett, a Washington municipal corporation (the "**City**"), and the Everett Station District Alliance, a Washington nonprofit corporation ("**Service Provider**").

### RECITALS

**A.** The Everett City Council, by Ordinance No. 3919-22 (the "BIA Ordinance") and in accordance with RCW 35.87A, established an Everett Station District Business Improvement Area (the "BIA") to aid general economic development and revitalization in the Everett Station District neighborhood, and to facilitate the cooperation of merchants, businesses, and residential property owners which assists trade, economic viability, and livability of the neighborhood.

**B.** The City desires to engage the Service Provider to provide services related to the purpose of the BIA for the City of Everett, as provided in Section 7 of the BIA Ordinance, which states in part that "The Mayor is hereby authorized and directed to contract with the Everett Station District Alliance, or similar organization, to administer funds for the approved purposes, activities, services, and projects for the first year. Thereafter the City may continue each year to contract with the Everett Station District Alliance or similar organization to administer the forthcoming annual program . . . ."

**C.** The Service Provider has agreed to offer its services in an agreement as set forth in Section 7 of the BIA Ordinance.

**D.** The Service Provider represented, and by entering into this Agreement, now represents, that it is fully qualified to perform the work to be performed hereunder in a competent and professional manner to the standards required by the City.

### AGREEMENT

In consideration of the covenants, terms and conditions set forth below, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Service Provider agree as follows:

**1. Engagement of Service Provider.** The City hereby agrees to engage the Service Provider, and the Service Provider hereby agrees, to perform the following work in a competent and professional manner (the "Work").

**A.** The operation of a neighborhood ambassador and security program to provide enhanced security for common areas and for people, which may include, but is not limited to, dissemination of information relative to security and for the purpose of generating favorable publicity, to promote the BIA and the property and businesses therein as a clean, safe, and inviting area; to the providing of additional security through a combination of public and private personnel, facilities, improved lighting, and such other measures or activities as will

accomplish the above-stated objectives, and assist in changing any presently existing unfavorable perceptions regarding the Everett Station District.

B. Maintenance and appearance enhancement of common areas, such as the sweeping and cleaning of sidewalks, the removal or prevention of litter and graffiti, providing trash receptacles and planting containers, and such other related activities or services which would enhance the appearance of the area and encourage the general public to increasingly visit and do business in the BIA.

C. Engagement in activities to market to the general public the desirability of the Everett Station District neighborhood for business, commercial, and recreational uses and activities.

D. Submission of reports and holding of meetings as follows:

1. Submission of Quarterly BIA Reports and Other Documents. The Service Provider shall hold four quarterly meetings per year of the BIA Ratepayer Advisory Board and submit quarterly reports of BIA expenditures and program performance to the BIA Ratepayer Advisory Board and the City. This information shall be subject to review by the City, and if found to be unacceptable under the terms of this Agreement or the BIA Ordinance, it shall be revised by the Service Provider to the extent necessary to render it acceptable for resubmission to the City as soon as practically possible.

2. Annual Submission of BIA Budget Report to City. On or before December 15 of each year, the Service Provider shall submit to the City its proposed budget for BIA expenditures, as approved by the BIA Ratepayer Advisory Board and ratepayers at the Annual Ratepayer Meeting, for the next year's operations. This proposed budget will be used by the City as a basis for the annual BIA assessment. In addition, the Service Provider shall submit to the City any amendments to its proposed BIA budget as the City may request.

3. Annual Submission of BIA Financial Report to City. Service Provider shall provide the City its BIA financial report as of the end of its fiscal year, showing income, expenditures, balance, profits, losses, and an itemized list of assets acquired together with their acquisition costs and depreciated values.

E. Execution of other services consistent with state law applicable to BIAs and the BIA Ordinance, as such law and ordinance may be amended, and as recommended by the Service Provider or by the ratepayer advisory board duly constituted in accordance with Section 14 of the BIA Ordinance, so long as such other services are approved in writing by the City's Finance Director and the Service Provider.

In the performance of this Agreement, the Service Provider shall not perform any services that are in addition to, or beyond the scope of the Work as stated above.

2. Term of Agreement. Because the BIA Ordinance was effective January 1, 2023, the parties agree that, regardless of the dates of signature on this Agreement, the first year of the term of this Agreement is from January 1, 2023, until December 31, 2023. After that, this Agreement will automatically extend from calendar year to calendar year unless earlier terminated.

**3. Compensation.**

**A. Services Performed.** The City shall pay the Service Provider only for completed Work and for services actually rendered which are described herein. Such payment shall be full compensation for Work performed or services rendered, including, but not limited to, all labor, materials, supplies, equipment, and incidentals necessary to complete the Work.

**B. Compensation.** Total compensation, including all services and expenses, shall not exceed a maximum of \$313,500 for the first year (January 1, 2023, to December 31, 2023). For subsequent calendar years, the total compensation under this Agreement for each calendar year, including all services and expenses, shall be the amount authorized to be expended during that calendar year under the BIA budget adopted and as may be modified by the City in accordance with the BIA Ordinance from time to time. Such payment shall be made in monthly payments. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the Work.

**C. Shortfall of Available Funds.** Funds available for Work to be rendered pursuant to this Agreement are limited. Should insufficient funds be available to fully fund the Work, City reserves the right to reduce payment(s) to Service Provider. Should payment(s) be reduced by the City due to insufficient funds available, Service Provider and City shall mutually agree on the type and amount of Work which is to be consequently reduced or eliminated.

**D. Surplus of Funds.** If the amount paid to the Contractor by the City under this Agreement for a given year is in excess of the amount expended by the Contractor in carrying out the Work for that year, the Contractor shall provide written notice thereof to the City in addition to reporting the surplus in reports that may be required under Section 1 above. Thereafter the City may require, at the City's sole discretion, that the excess funds be (1) used for the subsequent year's Work, (2) returned to the City, or (3) used as the City may otherwise direct.

**E. Service Provider Failure.** If Service Provider fails or refuses to accept direction or carry out the reasonable directions of the City in performance of the Work, the City may, in addition to any other remedy, withhold from any payment otherwise due an amount that the City in good faith believes is equal to the cost of the City of correcting, re-procuring, or remedying any damage caused by Service Provider's conduct.

**4. Termination of Contract.** City reserves the right to terminate this Agreement at any time by sending written notice of termination to Service Provider ("Notice"). The Notice shall specify a termination date ("Termination Date") at least fourteen (14) days after the date the Notice is issued. The Notice shall be effective ("Notice Date") upon the earlier of either actual receipt by Service Provider (whether by email, mail, delivery, or other method reasonably calculated to be received by Service Provider in a reasonably prompt manner) or three calendar days after issuance of the Notice. Upon the Notice Date, Service Provider shall immediately commence to end the Work in a reasonable and orderly manner. Unless terminated for Service Provider's material breach, the Service Provider shall be paid or reimbursed for: (a) all Work completed up to the Notice Date, less all payments previously made; and (b) Work completed

after the Notice Date, but prior to the Termination Date, that were reasonably necessary to terminate the Work in an orderly manner. Notices under this Section shall be sent by the United States Mail to Service Provider's address provided herein, postage prepaid, or by delivery. In addition, Notices may also be sent by any other method reasonably believed to provide Service Provider actual notice in a timely manner, such as email. The City does not by this Section waive, release, or forego any legal remedy for any violation, breach, or non-performance of any of the provision of this Agreement. At its sole option, and without limitation of or prejudice to any other available remedy or recourse, the City may deduct from the final payment due the Service Provider (a) any damages, expenses or costs arising out of any such violations, breaches, or non-performance and (b) any other back-charges or credits.

5. **Changes.** The City may, from time to time but always subject to the BIA Ordinance, unilaterally change the Work of the Service Provider to be performed hereunder. Such changes, including any increase or decrease in the Work (and resulting increase or decrease in compensation), shall: (a) be made only in writing and signed by an authorized City representative, (b) be explicitly identified as an amendment to this Agreement and (c) become a part of this Agreement.

6. **Subletting/Assignment of Contracts/Conveyance of Title of Certain Assets.**

A. The City consents to the Service Provider's subcontracting for neighborhood ambassador, maintenance, and appearance enhancement services as described in Sections 1.A. and 1.B. above. Service Provider shall not otherwise sublet or assign any of the Work without the express, prior written consent of the City.

B. Service Provider shall convey to the City, at the City's option, title to assets such as lighting improvements, trash receptacles, planting containers, and other items of tangible personal property acquired for street and sidewalk use together with any other assets acquired by the Service Provider for BIA purposes.

7. **Indemnification.** Except as otherwise provided in this Section, the Service Provider hereby agrees to defend and indemnify and save harmless the City from any and all Claims arising out of, in connection with, or incident to any negligent or intentional acts, errors, omissions, or conduct by Service Provider (or its employees, agents, representatives or subcontractors/subconsultants) relating to this Agreement, whether such Claims sound in contract, tort, or any other legal theory. The Service Provider is obligated to defend and indemnify and save harmless the City pursuant to this Section whether a Claim is asserted directly against the City, or whether it is asserted indirectly against the City, e.g., a Claim is asserted against someone else who then seeks contribution or indemnity from the City. The Service Provider's duty to defend and indemnify and save harmless pursuant to this Section is not in any way limited to, or by the extent of, insurance obtained by, obtainable by, or required of the Service Provider. The Service Provider's obligations under this Section shall not apply to Claims caused by the sole negligence of the City. If (1) RCW 4.24.115 applies to a particular Claim, and (2) such Claim is caused by or results from the concurrent negligence of (a) the Service Provider, its employees, subcontractors/subconsultants or agents and (b) the City, then the Service Provider's liability under this Section shall be only to the extent of Service Provider's negligence. Solely and expressly for the purpose of its duties to indemnify and defend and save

harmless the City, the Service Provider specifically waives any immunity it may have under the State Industrial Insurance Law, Title 51 RCW. The Service Provider recognizes that this waiver of immunity under Title 51 RCW was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation. As used in this Section: (1) "City" includes the City, the City's officers, employees, agents, and representatives and (2) "Claims" include, but is not limited to, any and all losses, penalties, fines, claims, demands, expenses (including, but not limited to, attorney's fees and litigation expenses), suits, judgments, or damages, irrespective of the type of relief sought or demanded, such as money or injunctive relief, and irrespective of whether the damage alleged is bodily injury, damage to property, economic loss, general damages, special damages, or punitive damages or infringement or misappropriation of any patent, copyright, trade secret, or other proprietary right. If, and to the extent, Service Provider employs or engages subconsultants or subcontractors, then Service Provider shall ensure that each such subconsultant and subcontractor (and subsequent tiers of subconsultants and subcontractors) shall expressly agree to defend and indemnify and save harmless the City to the extent and on the same terms and conditions as the Service Provider pursuant to this Section 10. The provisions of this Section shall survive the expiration or termination of this Agreement.

#### **8. Insurance.**

**A.** Service Provider shall comply with the following conditions and procure and keep in force during the term of this Agreement, at Service Provider's own cost and expense, the following policies of insurance with companies authorized to do business in the State of Washington, which are rated at least "A" or better and with a numerical rating of no less than seven (7), by A.M. Best Company and which are acceptable to the City.

**1.** Workers' Compensation Insurance as required by Washington law and Employer's Liability Insurance with limits not less than \$1,000,000 per occurrence. If the City authorizes sublet work, the Service Provider shall require each subcontractor to provide Workers' Compensation Insurance for its employees, unless the Service Provider covers such employees.

**2.** Commercial General Liability Insurance on an occurrence basis in an amount not less than \$1,000,000 per occurrence and at least \$2,000,000 in the annual aggregate, including but not limited to: premises/operations (including off-site operations), blanket contractual liability and broad form property damage.

**3.** Business Automobile Liability Insurance in an amount not less than \$1,000,000 per occurrence, extending to any automobile. A statement certifying that no vehicle will be used in accomplishing this Agreement may be substituted for this insurance requirement.

**B.** The above liability policies shall be primary as to the City and shall contain a provision that the policy shall not be canceled or materially changed without 30 days prior written notice to the City. No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of the Service Provider to furnish the required insurance during the term of this Agreement.

**C.** Upon written request by the City, the insurer or his/her agent will furnish, prior to or during any Work being performed, a copy of any policy cited above, certified to be a true and complete copy of the original.

D. Prior to the Service Provider performing any Work, Service Provider shall provide the City with a Certificate of Insurance acceptable to the City Attorney evidencing the required insurance. Service Provider shall provide the City with either (1) a true copy of an endorsement naming the City of Everett, its officers, employees and agents as Additional Insureds on the Commercial General Liability Insurance policy and the Business Automobile Liability Insurance policy with respect to the operations performed and services provided under this Agreement and that such insurance shall apply as primary insurance on behalf of such Additional Insureds or (2) a true copy of the blanket additional insured clause from the policies. Receipt by the City of any certificate showing less coverage than required is not a waiver of the Service Provider's obligations to fulfill the requirements.

E. Service Provider certifies that it is aware of the provisions of Title 51 of the Revised Code of Washington that requires every employer to be insured against liability of Workers' Compensation, or to undertake self-insurance in accordance with the provisions of that Title. Service Provider shall comply with the provisions of Title 51 of the Revised Code of Washington before commencing the performance of the Work. Service Provider shall provide the City with evidence of Workers' Compensation Insurance (or evidence of qualified self-insurance) before any Work is commenced.

F. In case of the breach of any provision of this Section 11, the City may, at its option and with no obligation to do so, provide and maintain at the expense of Service Provider, such types of insurance in the name of the Service Provider, and with such insurers, as the City may deem proper, and may deduct the cost of providing and maintaining such insurance from any sums which may be found or become due to Service Provider under this Agreement or may demand Service Provider to promptly reimburse the City for such cost.

9. **Risk of Loss.** Service Provider shall be solely responsible for the safety of its employees, agents, and subcontractors in the performance of the work hereunder and shall take all protections reasonably necessary for that purpose. All work shall be done at Service Provider's own risk, and Service Provider shall be solely responsible for any loss of or damage to Service Provider's materials, tools, or other articles used or held for use in connection with the work.

10. **Independent Contractor.**

A. This Agreement neither constitutes nor creates an employer-employee relationship. Service Provider must provide services under this Agreement as an independent contractor. Service Provider must comply with all federal and state laws and regulations applicable to independent contractors including, but not limited to, the requirements listed in this Section. Service Provider agrees to indemnify and defend the City from and against any claims, valid or otherwise, made against the City because of these obligations.

B. Any and all employees of the Service Provider, while engaged in the performance of any Work, shall be considered employees of only the Service Provider and not employees of the City. The Service Provider shall be solely liable for any and all claims that may or might arise under the Worker's Compensation Act on behalf of such employees or Service Provider, while so engaged and for any and all claims made by a third party as a consequence of

any negligent act or omission on the part of the Service Provider's employees, while so engaged on any of the Work.

C. Service Provider shall comply with all applicable provisions of the Fair Labor Standards Act and other legislation affecting its employees and the rules and regulations issued thereunder insofar as applicable to its employees and shall at all times save the City free, clear and harmless from all actions, claims, demands and expenses arising out of such act, and rules and regulations that are or may be promulgated in connection therewith.

D. Service Provider assumes full responsibility for the payment of all payroll taxes, use, sales, income, or other form of taxes (such as state and, city business and occupation taxes), fees, licenses, excises or payments required by any city, federal or state legislation which are now or may during the term of the Agreement be enacted as to all persons employed by the Service Provider and as to all duties, activities and requirements by the Service Provider in performance of the Work and Service Provider shall assume exclusive liability therefor, and meet all requirements thereunder pursuant to any rules or regulations that are now or may be promulgated in connection therewith.

11. **Employment/Conflict of Interest.** The Service Provider warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Service Provider, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Service Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee. Further, it is recognized that Service Provider may or will be performing professional services during the term of this Agreement for other parties; however, such performance of other services shall not conflict with or interfere with Service Provider's ability to perform the Work. Service Provider agrees to resolve any such conflicts of interest in favor of the City.

12. **Audits and Inspections.** At any time during normal business hours and as often as the City may deem necessary, the Service Provider shall make available to the City for the City's examination all of the Service Provider's records and documents with respect to all matters covered by this Agreement and, furthermore, the Service Provider will permit the City to audit, examine and make copies, excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.

13. **City of Everett Business License.** Service Provider agrees to obtain a City of Everett business license prior to performing any work pursuant to this Agreement.

14. **State of Washington Requirements.** Service Provider agrees to register and obtain any State of Washington business licenses, Department of Revenue account and/or unified business identifier number as required by RCW 50.04.140 and 51.08.195 prior to performing any work pursuant to this Agreement.

15. **Compliance with Federal, State and Local Laws.** Service Provider shall comply with and obey all federal, state, and local laws, regulations, and ordinances applicable to the operation of its business and to its performance of work hereunder.

16. **Compliance with the Washington State Public Records Act.** Service Provider acknowledges that the City is subject to the Public Records Act, chapter 42.56 RCW (the "Act"). All records owned, used, or retained by the City are public records subject to disclosure unless exempt under the Act, whether or not such records are in the possession or control of the City or Service Provider. Service Provider shall cooperate with the City so that the City may comply with all of its obligations under the Act. Within ten (10) days after receipt of notice from the City, Service Provider shall deliver to the City copies of all records relating to this Agreement or relating to the Work that the City determines qualify as the City's public records under the Act. If the City receives a public records request relating to this Agreement or relating to the Work, the City shall seek to provide notice to Service Provider at least ten (10) days before the City releases records pursuant to such public records request, but in no event will the City have any liability to Service Provider for any failure of the City to provide such notice. In addition to its other indemnification and defense obligations under this Agreement, Service Provider shall indemnify and defend the City from and against any and all losses, penalties, fines, claims, demands, expenses (including, but not limited to, attorney's fees and litigation expenses), suits, judgments, or damage arising from or relating to any failure of Service Provider to comply with this Section.

17. **Compliance with Grant Terms and Conditions.** Service Provider shall comply with any and all conditions, terms and requirements of any federal, state or other grant that wholly or partially funds Service Provider's work hereunder.

18. **Equal Employment Opportunity.** Service Provider shall not discriminate against any employee, applicant for employment, or other person on the basis of race, color, religion, sex, age, disability, marital state, or national origin or other circumstance prohibited by applicable federal, state, or local law or ordinance. Service Provider shall comply with and shall not violate any applicable provisions of Chapter 49.60 RCW, Title VI of the Civil Rights Act of 1964, and all applicable federal, state, or local law or ordinance regarding non-discrimination.

19. **Waiver.** Any waiver by the Service Provider or the City or the breach of any provision of this Agreement by the other party will not operate, or be construed, as a waiver of any subsequent breach by either party or prevent either party from thereafter enforcing any such provisions.

20. **Complete Agreement.** This Agreement contains the complete and integrated understanding and agreement between the parties and supersedes any understanding, agreement, or negotiation whether oral or written not set forth herein.

21. **Modification of Agreement.** This Agreement may only be modified as provided in Section 8, or by a writing explicitly identified as a modification of this Agreement that is signed by authorized representatives of the City and the Service Provider.

22. **Severability.** If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void, insofar as it is in conflict with said laws, and the remainder of the Agreement shall remain in full force and effect.

**23. Notices.** Notices to the City of Everett shall be sent to City of Everett, Finance Department, 2930 Wetmore Ave., Everett, WA 98201. Notices to the Service Provider shall be sent to Everett Station District Alliance, Executive Director, 3331 Broadway, Everett WA 98201. A party may change its notice address from time to time by written notice to the other party.

**24. Venue.** Venue for any lawsuit arising out of this Agreement shall be in the Superior Court of Snohomish County, Washington.

**25. Governing Law.** The laws of the State of Washington, without giving effect to principles of conflict of laws, govern all matters arising out of or relating to this Agreement.

**26. City Marks.** The Service Provider will not use any trade name, trademark, service mark, or logo of the City (or any name, mark, or logo confusingly similar thereto) in any advertising, promotions, or otherwise, without the City's express prior written consent.

**27. No Personal Liability.** No officer, agent or employee of the City shall be personally responsible for any liability arising under this Agreement, whether expressed or implied, nor for any statement or representation made or in any connection with this Agreement.

**28. Intellectual Property Rights.** Reports and any other intangible property created in furtherance of the Work are property of the City for all purposes, whether the project for which they are made is executed or not and may be used by the City for any purpose. Unless otherwise expressly agreed in writing, all intellectual property rights in such documents or intangible property created pursuant to this Agreement, or for the City of Everett, belong to the City of Everett. Service Provider retains any intellectual property rights in documents and intangible property created by Service Provider prior to engagement, or not created by Service Provider for its performance of this Agreement.

**29. Signature/Counterparts.** This Agreement may be signed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall be deemed one and the same document. Any electronic, faxed, scanned, photocopied, or similarly reproduced signature on this Agreement or any amendment hereto will be deemed an original signature and will be fully enforceable as if an original signature.

*[signature page follows]*

IN WITNESS WHEREOF, the City and Service Provider have executed this Agreement as of the Effective Date.

**CITY OF EVERETT,  
WASHINGTON**

ATTEST:

\_\_\_\_\_  
Cassie Franklin, Mayor

\_\_\_\_\_  
Office of the City Clerk

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

\_\_\_\_\_  
Office of the City Clerk

**EVERETT STATION DISTRICT ALLIANCE,**  
a Washington nonprofit corporation

  
\_\_\_\_\_  
Brock Howell, Executive Director  
[brock@everettstationdistrict.com](mailto:brock@everettstationdistrict.com)

  
\_\_\_\_\_  
Ed Petersen, Board President

4/6/2023  
\_\_\_\_\_  
Date

4/6/2023  
\_\_\_\_\_  
Date